

CALIFORNIA ENERGY COMMISSION

In the Matter of:)	
)	
Proposed Adoption of Regulations)	Docket No. 06-OIR-1
Establishing a Greenhouse Gases)	
Emission Performance Standard)	
For Baseload Generation of Local)	
Publicly Owned Electric Utilities)	
_____)	

**ELECTRICITY COMMITTEE ORDER
DENYING CMUA’S REQUEST CONCERNING THE SCHEDULE
December 20, 2006**

On October 30, 2006 the California Municipal Utilities Association (“CMUA”) filed a document titled “Request Of The California Municipal Utilities Association For A Decision By The Electricity Committee Concerning The Administrative Procedures For Establishing The Greenhouse Gas Emission Performance Standard Pursuant To SB 1368” (“the Request”). The request concerns the following language in SB 1368 (Stats. 2006, ch. 598):

On or before June 30, 2007, the Energy Commission, at a duly noticed public hearing . . . shall establish a greenhouse gases emission performance standard for all baseload generation of local publicly-owned electric utilities Enforcement of the . . . standard shall begin immediately upon the establishment of the standard.

(Pub. Utils. Code, § 8341, subd. (e)(1).)¹

Although the Request contains many assertions that this provision, and the entirety of SB 1368, has “unambiguous language” and a “plain meaning,” the provision is inherently self-contradictory when viewed along with the requirements of the California Administrative Procedure Act (“APA”). The provision requires both that the Energy Commission (“CEC”) “establish” a greenhouse gases emission

¹ Although SB 1368 does not take effect until January 1, 2007, in this Order we treat it, and the statutory provisions that it enacts, as if they were currently in effect.

performance standard by June 30, 2007, and that enforcement of the standard begin “immediately” upon “establishment.” This is not possible under the APA, which governs the adoption of regulations, including the standard. Before any regulation adopted by a state agency takes effect, the agency must submit detailed information to the Office of Administrative Law (“OAL”), which then has up to 30 working days to approve or disapprove the adopted regulations. (Gov’t Code, §§ 11340.5, subd. (a), 11346.9, 11349.3, subd. (a).) Only after OAL has approved a regulation may it take effect and be enforced by the agency. (*Id.*, § 11340.5, subd. (a).) Thus a regulation cannot be enforced immediately upon its adoption by the agency. As CMUA itself notes, “[t]his presents a conundrum for interpreting this statute.” (Request, p. 11.)

CMUA suggests that we resolve the conundrum by interpreting section 8341, subdivision (e)(1) as allowing CEC adoption by June 30, 2007, and the commencement of enforcement around August 10. (Request, App. A.) The CEC staff, on the other hand, urges an interpretation that would require enforcement to begin no later than June 30 – which in turn would necessitate CEC adoption in early May to allow adequate time for OAL approval.

When faced with statutory ambiguity, an agency (and the courts) must try to interpret the statute in the manner that best carries out the apparent intent of the Legislature and the purposes of the statute. (*Bodell Construction Co. v. Trustees of Cal. State University* (1998) 62 Cal.App.4th 1508, 1515 - 1516.) In so doing, the agency must attempt to harmonize all relevant provisions. (*Bowland v. Municipal Court* (1976) 18 Cal.3d 479, 489.) The fundamental purpose of SB 1368 is to reduce greenhouse gases emitted by powerplants that serve California consumers, and thereby to reduce consumers’ exposure to financial and reliability risks associated with potential federal regulation of greenhouse gases. (Stats. 2006, ch. 598, § 1.) The sooner that we adopt and begin enforcing regulations under SB 1368, the better this purpose will be served. Moreover, in interpreting section 8341, subdivision (e)(1) we think it best to focus on the “plain meaning” of an entire sentence – “Enforcement of the . . . standard shall begin immediately upon the establishment of the standard” – rather than on the Legislature’s apparently inadvertent use of the single word “establish” to describe the CEC’s action, rather than the more appropriate “adopt.” Therefore, the Staff’s interpretation is the most sound.

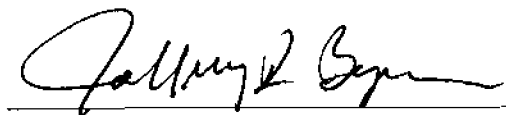
The Request contains many pages of argument, but virtually all of it consists of elementary (and irrelevant) propositions of California law on rulemaking procedures and statutory interpretation. CMUA’s real concern appears not to be

with the legality of our procedures, but rather with the opportunities for public review of our proposals and supporting analyses. (Request, pp. 6 - 7 & App. A.) We share CMUA's concern: frankly, any schedule calling for CEC adoption before the end of 2007, let alone in early May, is ambitious. We also share CMUA's desire for meaningful public participation in the development of the regulations. To that end, we have met with representatives of CMUA and the Natural Resources Defense Council, we have encouraged CEC staff to hold ongoing discussions on the key technical and legal issues, and by mid-January we will have held three separate public workshops for all parties to discuss the issues that we face in developing these regulations. We anticipate that these activities, plus our careful consideration of the comments submitted in this proceeding as well as of materials from the CPUC's parallel proceeding, will provide this Committee by late January the record we need to make the difficult decisions before us. If we find that additional time or public input is needed to clarify some issues, we will decide then whether to provide for one or more additional workshops or to request additional technical comment or briefing of legal issues.

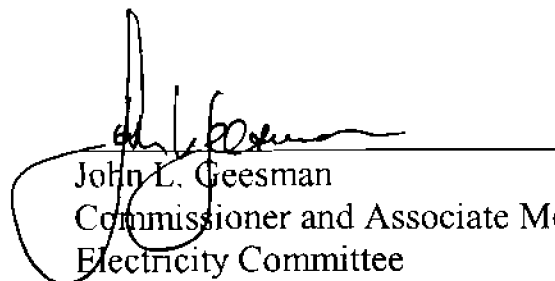
In sum, while there is no legal penalty if the regulations are not "established" until after June 30, we intend to begin enforcing the standard by that date if at all possible, based on a rulemaking conducted with full and vigorous public participation.

CMUA's Request is denied.

December 22, 2006



Jeffrey D. Byron
Commissioner and Presiding Member,
Electricity Committee



John L. Geesman
Commissioner and Associate Member,
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